

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
APPENDIX A: ANDERS CHECKLIST

This checklist is provided as a guide when preparing a motion to withdraw as counsel pursuant to *Anders v. California*, 386 U.S. 738 (1967).

I. SUMMARY	
A. Offense(s) of which defendant was convicted:	
B. Proceedings below: (check all that apply)	
<input type="checkbox"/> Guilty plea without a plea agreement? <input type="checkbox"/> Government prepared a <i>Pimentel</i> letter?	
<input type="checkbox"/> Guilty plea pursuant to a plea agreement? <input type="checkbox"/> Appeal waiver provision contained in plea agreement? <input type="checkbox"/> Waiver covers conviction? <input type="checkbox"/> Waiver covers imprisonment component of sentence? <input type="checkbox"/> Waiver covers non-imprisonment components of sentence?	
<input type="checkbox"/> District court imposed a sentence that was within the Guidelines range?	
<input type="checkbox"/> District court imposed a sentence that was outside the Guidelines range? <input type="checkbox"/> District court prepared a written statement of reasons for non-Guidelines sentence?	
C. Summary of Guidelines Calculations (fill in):	
PSR:	Dist. Court:
Total offense level:	_____
Total criminal history points	_____
Criminal history category:	_____
Guidelines range (Imprisonment):	_____ - _____
Guidelines range (Superv. Rel.):	_____ - _____
Guidelines range (Fine):	_____ - _____
D. Summary of Sentence Imposed (fill in):	
Imprisonment:	_____
Supervised release:	_____
Special assessment:	_____
Fine:	_____
Restitution:	_____
Forfeiture:	_____

		Citations to the Record
II. GUILTY PLEA		
(NOTE: Counsel must review guilty plea even for cases in which there is a valid appeal waiver. <i>See United States v. Gomez-Perez</i> , 215 F.3d 315, 319 (2d Cir. 2000).)		
A. Competency: Before accepting plea, court must determine that defendant is competent. <i>See Godinez v. Moran</i> , 509 U.S. 389, 400 (1993); <i>United States v. Rossillo</i> , 853 F.2d 1062, 1066-67 (2d Cir. 1988); <i>United States v. Livorsi</i> , 180 F.3d 76, 82 (2d Cir. 1999).		
B. Advising and Questioning Defendant — Fed. R. Crim. P. 11(b)(1), (c)		
Before accepting plea, court may place defendant under oath and must determine that defendant understands the following:		
1. government's right, in a prosecution for perjury or false statement, to use against the defendant any statement that the defendant gives under oath. <i>See Fed. R. Crim. P. 11(b)(1)(A)</i> .		
2. right to plead not guilty or persist in not-guilty plea. <i>See Fed. R. Crim. P. 11(b)(1)(B)</i> .		
3. right to a jury trial. <i>See Fed. R. Crim. P. 11(b)(1)(C)</i> .		
4. right to counsel, including: — court-appointed counsel; — counsel at trial; and — counsel at every other stage of the proceeding. <i>See Fed. R. Crim. P. 11(b)(1)(D)</i> .		
5. trial rights: — right to confront adverse witnesses; — right against compelled self-incrimination; — right to testify; — right to present evidence; and — right compel the attendance of witnesses. <i>See Fed. R. Crim. P. 11(b)(1)(E)</i> .		
6. by pleading guilty, defendant waives trial rights. <i>See Fed. R. Crim. P. 11(b)(1)(F)</i> .		
7. nature of each charge to which the defendant is pleading. <i>See Fed. R. Crim. P. 11(b)(1)(G)</i> .		
8. any maximum possible penalty, including imprisonment, fine, and term of supervised release. <i>See Fed. R. Crim. P. 11(b)(1)(H)</i> .		
9. any mandatory minimum penalty. <i>See Fed. R. Crim. P. 11(b)(1)(I)</i> .		
10. any applicable forfeiture. <i>See Fed. R. Crim. P. 11(b)(1)(J)</i> .		
11. court's authority to order restitution. <i>See Fed. R. Crim. P. 11(b)(1)(K)</i> .		

12. court's obligation to impose a special assessment. <i>See</i> Fed. R. Crim. P. 11(b)(1)(L).	
13. court's obligations to calculate Guidelines range and consider that range and other 18 U.S.C. § 3553(a) factors. <i>See</i> Fed. R. Crim. P. 11(b)(1)(M).	
14. terms of any waiver of right to appeal or collaterally attack the sentence. <i>See</i> Fed. R. Crim. P. 11(b)(1)(N).	
15. special advisories for cases involving certain types of plea agreements — <i>See</i> Fed. R. Crim. P. 11(c)(3), (4): <ul style="list-style-type: none"> — if plea agreement is of the type described in Fed. R. Crim. P. 11(c)(1)(B) (non-binding sentencing recommendation or request), inform defendant that there is no right to withdraw plea if court does not follow recommendation or request; — if plea agreement is of the type specified in Fed. R. Crim. P. 11(c)(1)(A) (Gov't agrees to not bring, or dismiss, other charges) or (c)(1)(C) (binding sentencing recommendation or request), inform defendant that the agreed disposition will be included in the judgment. 	
C. Voluntariness of Plea — Fed. R. Crim. P. 11(b)(2) Court must determine that the plea is voluntary and did not result from force, threats, or promises.	
D. Factual Basis for Plea — Fed. R. Crim. P. 11(b)(3) Court must determine that the plea is supported by a factual basis.	
III. SPECIAL ISSUES FOR CASES INVOLVING WAIVER OF APPELLATE RIGHTS <i>See United States v. Gomez-Perez</i> , 215 F.3d 315 (2d Cir. 2000)	
A. Appeal waiver provision (cite to location in the record)	
B. Defendant's waiver of appellate rights must be knowing and voluntary	
IV. SENTENCING	
(Note: Discussion of sentencing in the <i>Anders</i> brief may be pretermitted if record reflects a valid, enforceable waiver of right to appeal sentence, <u>but</u> only with respect to those components of the sentence covered by appeal waiver)	
A. Pre-Sentence Investigation Report (PSR)	
1. PSR's offense level calculation (Note: <i>Anders</i> brief should identify PSR's findings for base offense level and any adjustments)	
2. PSR's criminal history calculation (Note: <i>Anders</i> brief should identify PSR's findings for prior convictions and any additional points)	
3. PSR's Guidelines range	

4. Relevant statutory minimum and maximum penalties (term of imprisonment, supervised release, etc.), if any, for each offense of which defendant was convicted	
5. PSR's fine range (if fine was imposed), and findings on fine and on defendant's ability to pay; <i>see U.S.S.G. § 5E1.2; 18 U.S.C. §§ 3571, 3572</i>	
6. PSR's restitution findings and recommendations	
7. Disclosure: PSR must be timely disclosed prior to sentencing — Fed. R. Crim. P. 32(e)(2)	
B. Court's compliance with Rule 32 at sentencing	
1. Court must verify that defendant and counsel have read and discussed the PSR and any addendum to the PSR — Fed. R. Crim. P. 32(i)(1)(A)	
2. Court must allow parties' attorneys an opportunity to comment on the PSR — Fed. R. Crim. P. 32(i)(1)(C)	
3. For each objection to the PSR, Court must either rule on the objection or determine that a ruling is unnecessary — Fed. R. Crim. P. 32(i)(3)(B)	
4. Court must provide counsel with an opportunity to speak on defendant's behalf — Fed. R. Crim. P. 32(i)(4)(A)	
5. Court must permit defendant to speak or present any information to mitigate the sentence — Fed. R. Crim. P. 32(i)(4)(A)	
6. Court must advise defendant of any right to appeal and right to appeal <i>in forma pauperis</i> — Fed. R. Crim. P. 32(j)(1)	
7. Written judgment must correctly set forth plea, offense(s) of conviction, and sentence (in conformity with oral sentence) — Fed. R. Crim. P. 32(k)	
C. Court's Guidelines calculations	
1. Court's offense level calculation (Note: <i>Anders</i> brief should identify any district court findings for base offense level and any adjustments)	
2. Court's criminal history calculation (Note: <i>Anders</i> brief should identify any district court findings for prior convictions and any additional points)	
3. Court's Guidelines range	
D. Court's pronouncement of sentence	
1. Court must treat Guidelines range as advisory — <i>United States v. Booker</i> , 543 U.S. 220 (2005)	
2. Court must consider the 18 U.S.C. § 3553(a) factors — 18 U.S.C. § 3553(a)(1)–(7)	

<p>3. Court must provide oral explanation for the sentence imposed — 18 U.S.C. § 3553(c); <i>see also</i> 18 U.S.C. § 3553(c)(1) (if court imposes Guidelines sentence and Guidelines range exceeds 24 months, court must state the reason for imposing a sentence at a particular point within the range)</p>	
<p>4. If court imposes a non-Guidelines sentence, court must provide a written statement of reasons (“SOR”) as required by 18 U.S.C. § 3553(c)(2).</p>	
<p>(Note: In cases subject to the requirements of 18 U.S.C. § 3553(c)(2), appellate counsel will not be permitted to withdraw pursuant to <i>Anders</i> until: (1) appellate counsel submits the written statement of reasons to the appellate court; and (2) appellate counsel addresses the district court’s compliance with § 3553(c)(2) as part of the <i>Anders</i> analysis. <i>See United States v. Hall</i>, 499 F.3d 152, 154 (2d Cir. 2007).) (per curiam); <i>but see United States v. Elbert</i>, __ F.3d __, 2011 WL 4347191 (2d Cir. 2011) (partially abrogating <i>Hall</i> with respect to the nature of the remedy for non-compliance with 18 U.S.C. § 3553(c)(2)).</p>	
V. <i>Anders</i> Notice	
<p>1. As part of the <i>Anders</i> motion, appellate counsel must submit an affidavit or affirmation showing that the client has been informed that:</p> <ul style="list-style-type: none"> <input type="checkbox"/> A brief pursuant to <i>Anders v. California</i>, 386 U.S. 738 (1967), has been filed; <input type="checkbox"/> The filing of an <i>Anders</i> brief will probably result in the dismissal of the appeal and affirmance of the conviction; and <input type="checkbox"/> The client may request assistance of other counsel or submit <i>pro se</i> response papers. 	
<p>2. Defendant’s language abilities (fill out):</p> <p>Did the defendant use a foreign language interpreter in the proceedings below?</p> <p><input type="checkbox"/> No <input type="checkbox"/> Yes, a _____ language interpreter</p> <p>The record indicates that (check all that apply, and provide citations to record):</p> <p><input type="checkbox"/> defendant speaks English <input type="checkbox"/> defendant does not speak English <input type="checkbox"/> defendant’s primary language is a non-English language: _____ (fill in) <input type="checkbox"/> defendant is able to read in English <input type="checkbox"/> defendant is able to read in a non-English language: _____ (fill in) <input type="checkbox"/> defendant may be illiterate</p> <p>(Note: Where counsel has reason to believe that the client may not speak English, or may be illiterate, or both, counsel’s affidavit or affirmation should describe counsel’s reasonable efforts to communicate the three <i>Anders</i> notice requirements and the substance of the <i>Anders</i> brief to the client in a manner and a language understood by the client. <i>See United States v. Leyba</i>, 379 F.3d 53 (2d Cir. 2004); <i>United States v. Santiago</i>, 495 F.3d 27 (2d Cir. 2007).)</p>	